

AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 839

Introduced by Assembly Member Lowenthal

February 22, 2001

An act to *amend Section 17538.4 of, and to add Section 17538.43 to, the Business and Professions Code, relating to advertising.*

LEGISLATIVE COUNSEL'S DIGEST

AB 839, as amended, Lowenthal. Advertising: facsimile machine.

Existing law prohibits a person conducting business in this state from faxing *or electronically mailing* unsolicited advertising material, unless certain conditions are met.

This bill would ~~prohibit~~ *delete the existing prohibition relative to faxing unsolicited advertising material and would instead enact new provisions prohibiting* a person from transmitting unsolicited advertising material to a facsimile machine located in this state, with specified exceptions. *The bill would authorize a person or entity to recover specified damages for each violation through the bringing of an action in the appropriate court.*

Because a violation of the prohibition against faxing advertising materials into the state would *also* be a misdemeanor, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares that
2 unlike other forms of advertising media, the use of a fax machine
3 to transmit unsolicited advertising and promotional material
4 imposes a real cost on the recipient of the transmission. Every fax
5 transmission creates expense for the recipient in the form of paper,
6 ink, and wear and tear on a fax machine. Unsolicited fax
7 advertising imposes this cost without the knowledge or permission
8 of the recipient.

9 SEC. 2. *Section 17538.4 of the Business and Professions*
10 *Code is amended to read:*

11 17538.4. (a) No person or entity conducting business in this
12 state shall ~~facsimile (fax) or cause to be faxed, or~~ electronically
13 mail (e-mail) or cause to be e-mailed, documents consisting of
14 unsolicited advertising material for the lease, sale, rental, gift
15 offer, or other disposition of any realty, goods, services, or
16 extension of credit unless:

17 ~~(1) In the case of a fax, that person or entity establishes a~~
18 ~~toll-free telephone number that a recipient of the unsolicited faxed~~
19 ~~documents may call to notify the sender not to fax the recipient any~~
20 ~~further unsolicited documents.~~

21 ~~(2) In the case of e-mail, that person or entity establishes a~~
22 ~~toll-free telephone number or valid sender operated return e-mail~~
23 ~~address that the recipient of the unsolicited documents may call or~~
24 ~~e-mail to notify the sender not to e-mail any further unsolicited~~
25 ~~documents.~~

26 (b) All unsolicited ~~faxed or~~ e-mailed documents subject to this
27 section shall include a statement informing the recipient of the
28 toll-free telephone number that the recipient may call, or a valid
29 return address to which the recipient may write or e-mail, as the
30 case may be, notifying the sender not to ~~fax or~~ e-mail the recipient
31 any further unsolicited documents to the ~~fax number, or numbers,~~
32 ~~or~~ e-mail address, or addresses, specified by the recipient.



1 ~~In the case of faxed material, the statement shall be in at least~~
2 ~~nine-point type. In the case of e-mail, the~~

3 *The statement shall be the first text in the body of the message*
4 *and shall be of the same size as the majority of the text of the*
5 *message.*

6 (c) Upon notification by a recipient of his or her request not to
7 receive any further unsolicited ~~faxed or~~ e-mailed documents, no
8 person or entity conducting business in this state shall ~~fax or cause~~
9 ~~to be faxed or~~ e-mail or cause to be e-mailed any unsolicited
10 documents to that recipient.

11 (d) ~~In the case of e-mail, this~~ *This* section shall apply when the
12 unsolicited e-mailed documents are delivered to a California
13 resident via an electronic mail service provider's service or
14 equipment located in this state. For these purposes "electronic
15 mail service provider" means any business or organization
16 qualified to do business in this state that provides individuals,
17 corporations, or other entities the ability to send or receive
18 electronic mail through equipment located in this state and that is
19 an intermediary in sending or receiving electronic mail.

20 (e) As used in this section, "unsolicited e-mailed documents"
21 means any e-mailed document or documents consisting of
22 advertising material for the lease, sale, rental, gift offer, or other
23 disposition of any realty, goods, services, or extension of credit
24 that meet both of the following requirements:

25 (1) The documents are addressed to a recipient with whom the
26 initiator does not have an existing business or personal
27 relationship.

28 (2) The documents are not sent at the request of, or with the
29 express consent of, the recipient.

30 (f) As used in this section, ~~"fax" or "cause to be faxed" or~~
31 ~~"e-mail" or "cause to be e-mailed"~~ does not include or refer to the
32 transmission of any documents by a telecommunications utility or
33 Internet service provider to the extent that the telecommunications
34 utility or Internet service provider merely carries that transmission
35 over its network.

36 (g) In the case of e-mail that consists of unsolicited advertising
37 material for the lease, sale, rental, gift offer, or other disposition
38 of any realty, goods, services, or extension of credit, the subject
39 line of each and every message shall include "ADV:" as the first
40 four characters. If these messages contain information that

1 consists of unsolicited advertising material for the lease, sale,
2 rental, gift offer, or other disposition of any realty, goods, services,
3 or extension of credit, that may only be viewed, purchased, rented,
4 leased, or held in possession by an individual 18 years of age and
5 older, the subject line of each and every message shall include
6 “ADV:ADLT” as the first eight characters.

7 (h) An employer who is the registered owner of more than one
8 e-mail address may notify the person or entity conducting business
9 in this state e-mailing or causing to be e-mailed, documents
10 consisting of unsolicited advertising material for the lease, sale,
11 rental, gift offer, or other disposition of any realty, goods, services,
12 or extension of credit of the desire to cease e-mailing on behalf of
13 all of the employees who may use employer-provided and
14 employer-controlled e-mail addresses.

15 (i) This section, or any part of this section, shall become
16 inoperative on and after the date that federal law is enacted that
17 prohibits or otherwise regulates the transmission of unsolicited
18 advertising by electronic mail (e-mail).

19 SEC. 3. Section 17538.43 is added to the Business and
20 Professions Code, to read:

21 17538.43. (a) No person or entity shall ~~send~~ *disseminate* an
22 unsolicited advertisement via any telephone facsimile machine,
23 computer, or other device, to make an electronic or telephonic
24 transmission to a telephone facsimile machine located in
25 California by means of any connection with a telephone network
26 for the purpose of transmitting a commercial solicitation.

27 (b) For purposes of this section, “telephone facsimile
28 machine” means equipment that has the capacity to either:

29 (1) Transcribe text or images or both from paper into an
30 electronic signal, and transmit that signal over a regular telephone
31 line.

32 (2) Transcribe text or images or both onto paper from an
33 electronic signal received over a regular telephone line.

34 (c) For purposes of this section, “commercial solicitation”
35 means an electronic or telephonic transmission to a facsimile
36 device of unsolicited advertising material for the lease, sale, rental,
37 gift, offer, or other disposition of any realty, goods, services, or
38 extension of credit.

(d) For purposes of this section, “commercial solicitation” does not include an electronic or telephonic transmission to a facsimile device that is any of the following:

(1) Made in the course of prior negotiations between the party sending and the party receiving the materials.

(2) Made to a party with whom the sender has a prior business relationship or an existing business relationship.

(3) Made in the course of a followup sales call.

(e) Any person or entity aggrieved by a violation of this section may bring an action in the appropriate court and shall be entitled to recover, for each violation, the amount of actual monetary loss, or the sum of five hundred dollars (\$500), whichever is greater.

~~SEC. 3.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.